

ESTTA Tracking number: **ESTTA238746**

Filing date: **09/24/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

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|---------------------------------------|---|
| Name | Bear Naked, Inc. |
| Granted to Date of previous extension | 09/24/2008 |
| Address | One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES |

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| Correspondence information | David A Herdman Assistant Secretary/Corporate Counsel Bear Naked, Inc. One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES trademarks@kellogg.com Phone:269-961-2170 |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 76677088 | Publication date | 05/27/2008 |
| Opposition Filing Date | 09/24/2008 | Opposition Period Ends | 09/24/2008 |
| Applicant | LEE, SEAN SANGSOO 3200 WILSHIRE BOULEVARD, #1450 LOS ANGELES, CA 90010 UNITED STATES | | |

Goods/Services Affected by Opposition

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|---|
| Class 005. First Use: 2007/01/01 First Use In Commerce: 2007/01/01 All goods and services in the class are opposed, namely: health supplements, namely, dietary, nutritional, herbal, vitamin, mineral, and food supplements, meal replacement and dietary and nutritional supplement drink mixes, meal replacement bars, drinks, powders, and shakes; nutraceutical dietary supplements |
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Grounds for Opposition

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2800495 | Application Date | 02/20/2003 |
| Registration Date | 12/30/2003 | Foreign Priority Date | NONE |

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|---------------------|---|
| Word Mark | BEAR NAKED |
| Design Mark | |
| Description of Mark | NONE |
| Goods/Services | Class 030. First use: First Use: 2002/10/31 First Use In Commerce: 2002/10/31 Granola cereals |

| | | | |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3161484 | Application Date | 05/27/2004 |
| Registration Date | 10/24/2006 | Foreign Priority Date | NONE |
| Word Mark | BEAR NAKED | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 030. First use: First Use: 2002/10/00 First Use In Commerce: 2002/10/00 Granola-based trail mix, baked snacks, namely, bakery based snack foods, bread | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3260867 | Application Date | 08/21/2006 |
| Registration Date | 07/10/2007 | Foreign Priority Date | NONE |
| Word Mark | BEAR NAKED | | |
| Design Mark | | | |
| Description of Mark | The mark consists of the words BEAR NAKED with the letter E shown as a bear claw. | | |
| Goods/Services | Class 030. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 Breakfast cereals; Oatmeal; Rolled oats | | |

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| Attachments | 78217073#TMSN.gif (1 page)(bytes) 76978227#TMSN.gif (1 page)(bytes) 78956284#TMSN.jpeg (1 page)(bytes) NAKED BAR Opposition Notice scan.pdf (5 pages)(692813 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-------------------|
| Signature | /DAVID A HERDMAN/ |
| Name | David A Herdman |
| Date | 09/24/2008 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|-------------------------|---|--------------------------------|
| BEAR NAKED, INC. |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | |
| |) | Opposition No. _____ |
| |) | Serial No. 76/677,088 |
| SEAN SANGSOO LEE |) | Mark: NAKED BAR |
| |) | Filing Date: May 18, 2007 |
| Applicant. |) | Publication Date: May 27, 2008 |
| |) | |

NOTICE OF OPPOSITION

Bear Naked, Inc., a Delaware corporation, located and doing business at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016, (hereinafter called "Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 76/677,088 in Class 5, filed by Sean Sangsoo Lee, an individual (hereinafter "Applicant") on May 18, 2007, and opposes Application Serial No. 76/677,088.

The grounds for this opposition are as follows:

1. Commencing long prior to Applicant's filing date, Opposer, has engaged, and is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of food products, including various types of granola and granola-based snack food products, including granola-based trail mix and baked snack foods, including bars.

2. Commencing long prior to Applicant's filing date, Opposer has used, and Opposer is now using Opposer's BEAR NAKED trademarks (hereinafter sometimes referred to as "Opposer's Marks") in connection with healthy food products, including various types of granola and granola-based snack food products, including granola-based trail mix and baked snack foods, including bars, distributed and sold by Opposer in commerce.

3. Opposer, is owner of, and will rely herein, upon the following Federal Trademark registrations:

| MARK | REG. NO | ISSUE DATE | GOODS |
|---------------------|---------|------------|--|
| BEAR NAKED & Design | 2800495 | 12/20/2003 | Granola cereals |
| BEAR NAKED & Design | 3161484 | 10/24/2006 | Granola-based trail mix, baked snacks, namely, bakery based snack foods, bread |
| BEAR NAKED & Design | 3260867 | 07/10/2007 | Oatmeal, rolled oats and breakfast cereals |

(hereinafter sometimes referred to as "Opposer's Registered Marks"). Registration of Opposer's Registered Marks is valid, subsisting and conclusive evidence of Opposer's exclusive right to use Opposer's Registered Marks in commerce on the goods specified in said registrations.

4. In addition to Opposer's Marks and Opposer's Registered Marks specified above, Opposer shall rely herein upon its common law usage of Opposer's other BEAR NAKED marks for other various promotional and licensed products and uses (hereinafter sometimes referred to as "Opposer's BEAR NAKED Marks")

5. Opposer has made substantial investment in advertising and promoting its goods under Opposer's BEAR NAKED Marks since their initial use. Opposer has extensively used, advertised, promoted and offered Opposer's healthy snack foods bearing Opposer's BEAR NAKED Marks to the public through various channels of trade in commerce with the result that Opposer's customers and the public in general have come to know and recognize Opposer's BEAR NAKED Marks and associate the same with Opposer and/or goods sold by Opposer.

6. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's BEAR NAKED Marks, on May 18, 2007, Applicant filed an application for registration of the proposed, typed form NAKED BAR Mark for "health supplements, namely, dietary, nutritional, herbal, vitamin, mineral, and food supplements, meal replacement and

dietary and nutritional supplement drink mixes, meal replacement bars, drinks, powders, and shakes; nutraceutical dietary supplements” in International Class 5. Said application was assigned Serial No. 76/677,088.

7. Applicant’s NAKED BAR Mark so resembles Opposer’s BEAR NAKED Marks, especially when applied to bar products, as to be likely to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation.

8. Opposer, upon information and belief, avers that its customers, and the public generally, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant’s proposed goods to be marketed under Applicant’s alleged NAKED BAR Mark and misled into believing that such goods emanate from, or are licensed to or are in some way directly or indirectly associated with Opposer, to the detriment of Opposer and its reputation.

9. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged NAKED BAR Mark, as set forth in Applicant’s Trademark Application Serial No. 76/677,088, in that the mark is substantially similar to Opposer’s Marks and will be used in connection with the sale and advertising of food bar products that are either closely related to Opposer’s goods or a type of product that has often been discussed as a potential category for expansion or licensing by Opposer.

Wherefore, this Opposer, Kellogg North America Company believes and avers that it is being and will continue to be damaged by registration of the proposed NAKED BAR Mark as aforesaid, and prays that said Application Serial No. 76/677,088 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,

KELLOGG NORTH AMERICA COMPANY

By: 
David Herdman
Assistant Secretary/Corporate Counsel
Bear Naked, Inc.
One Kellogg Square
P.O. Box 3599
Battle Creek, MI 49016

Date: September 24, 2008

